

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10300 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

DILIPBHAI DULABHAI PATEL

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

MR ANIL S DAVE for Petitioner
MR AB VYAS, AGP for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 19/02/99

ORAL JUDGEMENT

The petitioner by way of this petition under Article 226 of the Constitution of India, has challenged the order dated 23.12.1997 passed by the Police Commissioner, Surat under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the Act"). It may be stated

that although the order of detention was passed on 23.12.1997, the petitioner was detained only in the month of August 1998.

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on the two pending criminal cases filed against the detenu in the year 1997 for the offences punishable under Sections 379 and 114 of the Indian Penal Code. Beside these criminal cases, the detaining authority has also placed reliance on the incidents which took place on 9-8-97 and 5-10-97 and 16-11-97 alleging against the petitioner to have involved in beating the witnesses on the allegations, inter alia, for acting as informant of the police or for refusing to make payment as demanded by the petitioner. On all the occasions people gathered to watch the incidents. However, they dispersed when the petitioner and his associates rushed towards them with deadly weapons with the result an atmosphere of fear and terror was created and the people started running helter skelter and the shops were closed. On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a "dangerous person" within the meaning of Section 2 (c) of the Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it is necessary to detain the detenu and therefore the impugned order of detention came to be passed against him.

My attention has been invited by the learned Advocate for the petitioner to the statements of the witnesses and it is contended that the alleged activities of the petitioner do not constitute breach of public order and, therefore, the satisfaction arrived at by the detaining authority is not genuine. Having gone through their statements of the witnesses closely, I find substance in their submission of the learned Advocate for the petitioner. Even if the allegations made in the statements of their witnesses are accepted to be true, they at the most constitute breach of law and order but under no circumstances it can be construed as breach of public order. The statements are too general and vague and stereotype in nature. The cumulative reading of the statements, in my opinion, do not constitute breach of public order and, therefore, the satisfaction arrived at by the detaining authority in passing the order of detention under Section 3(1) of the Act is not genuine. Consequently, therefore, the continuous detention of the detenu is vitiated.

In the result, this petition is allowed. The

order of detention dated 23-12-1997 is quashed and set aside. The detenu Dilipbhai Dulabhai Patel is ordered to be set at liberty forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

Verified copy